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CIVIL PRACTICE Civil Actions; Arguments of Counsel: Provide the Plaintiff is Entitled to Opening and Concluding Arguments Except When Defendant Introduces No Evidence or Admits a Prima Facie Case; Provide that in Civil Actions for Personal Injuries, Defendant Does Not Admit a Prima Facie Case if Defendant Introduces Evidence as to Extent of Damages, Other than Cross-Examination of Plaintiff or Plaintiff's Witness

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CIVIL PRACTICE

Civil Actions; Arguments of Counsel: Provide that Plaintiff is Entitled to Opening and Concluding Arguments Except When Defendant Introduces No Evidence or Admits a Prima Facie Case; Provide that in Civil Actions for Personal Injuries, Defendant Does Not Admit a Prima Facie Case if Defendant Introduces Evidence as to Extent of Damages, Other than Cross-Examination of Plaintiff or Plaintiff's Witnesses

CODE SECTION:	O.C.G.A. § 9-10-186 (new)
BILL NUMBER:	HB 369
ACT NUMBER:	351
GEORGIA LAWS:	1997 Ga. Laws 951
SUMMARY:	The Act provides that in civil actions when the burden of proof rests on the plaintiff, the plaintiff shall be entitled to make the opening and concluding arguments. The Act entitles the defendant to make opening and concluding arguments if the defendant does not introduce any evidence or if the defendant admits the prima facie case. The Act further provides that in a civil action for personal injury, the defendant shall not be deemed to have admitted a prima facie case if the defendant introduces evidence concerning the extent of damages, other than during cross-examination of the plaintiff or the plaintiff's witnesses.
EFFECTIVE DATE:	July 1, 1997

History

HB 369 was authored by Representative Thomas Bordeaux to correct what he perceived to be an inequity in the Uniform Superior Court Rules.[1] The defendant is entitled to opening and concluding arguments if the defendant does not produce any evidence during trial, or if the defendant admits the prima facie case.[2] In practice, defendants have been able to secure the advantage of making opening and concluding arguments by admitting the prima facie case, but nonetheless presenting evidence refuting the claimed amount of damages.[3]

By way of illustration, assume the following scenario:[4] An insurance

1. Telephone Interview with Rep. Thomas Bordeaux, House District No. 151 (Apr. 21, 1997) [hereinafter Bordeaux Interview].
2. *See* GA. UNIF. SUPER. CT. R. 13.4.
3. *See* Bordeaux Interview, *supra* note 1.
4. The hypothetical situation was employed by Representative Bordeaux to explain

company defends against a personal injury claim arising from an auto accident. Under the Uniform Rules, the defendant admits the plaintiff is damaged to some degree or even a slight degree, and the prima facie case is thus admitted.[5] Then, a trial ensues to contest the extent of damage.[6] The insurance company presents evidence at trial of prior injuries the plaintiff has suffered that tend to refute the claim that the plaintiff's present injuries resulted from the auto accident. Under Uniform Superior Court Rule 13, as it stood before the Act, the insurance company would be entitled to opening and concluding arguments, even though it had admitted liability.[7]

HB 369

The Act adds new Code section 9-10-186.[8] As introduced in the House, HB 369 provided that in civil cases in which the plaintiff has the burden of proof, the plaintiff would be entitled to make the opening and concluding arguments.[9] It provided an exception which entitled the defendant in such a case to the opening and concluding arguments when the defendant did not introduce any evidence.[10] A floor substitute expanded this exception by entitling the defendant to opening and concluding arguments not only when the defendant introduces no evidence, but also when the defendant admits a prima facie case.[11] However, the floor substitute modified this expansion by providing that in "civil actions for personal injuries, the defendant shall not be deemed to have admitted a prima facie case if such defendant introduces any evidence as to the extent of the injury."[12]

In the Senate Judiciary Committee, the floor substitute modification was amended to provide that the defendant would be deemed to have admitted a prima facie case if the evidence as to the extent of damages was brought forth by the defendant only on cross-examination of the plaintiff or the plaintiff's witnesses.[13] The bill passed the Senate with these amendments.[14]

According to the author, Representative Bordeaux, the right to make opening and concluding arguments is a "valuable right" because it is an

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the inadequacies of the Uniform Superior Court Rule. *Id.*

5. *See id.*
6. *See id.*
7. *See id.*
8. O.C.G.A. § 9-10-186 (Supp. 1997).
9. HB 369, as introduced, 1997 Ga. Gen. Assem.
10. *See id.*
11. HB 369 (HFS), 1997 Ga. Gen. Assem.
12. *Id.*
13. HB 369 (SCS), 1997 Ga. Gen. Assem.
14. *See* Final Composite Status Sheet, Mar. 28, 1997.

opportunity to have the first and the last word.[15] Because the plaintiff generally shoulders the burden of proof, the right to open and conclude is normally reserved for the plaintiff.[16] An exception to this arises if the defendant does not introduce any evidence or admits the prima facie case. In such a case, the defendant is entitled to open and conclude. However, before the Act, the defendant was entitled to open and conclude if the defendant admitted liability, but contested the extent of damages.[17] According to Bordeaux, this was "unfair" to the plaintiff because the jury could lose sight of the fact that the defendant had conceded liability when the defendant is afforded the opportunity to have the first and last word, wherein the defendant calls into question the extent of the plaintiff's injuries, or whether the injuries suffered by the plaintiff are attributable to the defendant at all.[18] HB 369 redefines what a prima facie case is.[19] If the defendant puts on any evidence as to damages, he is deemed not to have admitted the prima facie case and, therefore, does not get the right to open and close.

Representative Ben Allen noted that when the defendant contests the extent of damages, a prima facie case has not really been admitted at all.[20] Thus, the defendant in such a case would not be entitled to open and conclude anyway. These two approaches, though analytically different, lead to the same result.

James W. Standard, Jr.

15. Bordeaux Interview, *supra* note 1.
16. *See id.*
17. *Id.*
18. *See id.*
19. *See id.*
20. Telephone Interview with Rep. Ben Allen, House District No. 117 (Apr. 21, 1997).